

COOPERATIVE AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION, CALIFORNIA AGRICULTURAL
COMMISSIONERS AND SEALERS ASSOCIATION, AND THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION IX

The State of California Environmental Protection Agency, Department of Pesticide Regulation (hereinafter State), the California Agricultural Commissioners and Sealers Association (hereinafter CACASA) and the U. S. Environmental Protection Agency, Region IX (hereinafter U.S. EPA), in order to ensure a unified and coordinated program of pesticide episode reporting, investigation, and enforcement action in the State of California, hereby enter into this cooperative agreement.

I. DEFINITIONS

- A. "Episode" means any event which involves a violation of the pesticide use provisions of FIFRA, potential or actual illness, damage, harm, loss, or contamination alleged as resulting from the use or presence of a pesticide.
- B. "Priority Investigation" means an investigation of an episode that appears to meet one or more of the effects criteria listed in Appendix A of this agreement.

II. LEGAL AUTHORITY

- A. U.S. EPA is responsible for administering and enforcing the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U. S. C. Section 136 et seq.) (hereinafter FIFRA). Section 26 of FIFRA specifies that for the purposes of this Act, a state shall have primary enforcement responsibility for pesticide use violations when the state has adopted and is implementing adequate use regulations or has entered into a cooperative agreement with U.S. EPA specific to pesticide enforcement.

Section 27 of FIFRA addresses failure by the State to assume enforcement of state pesticide regulations.

Section 12(a)(2)(G) of FIFRA sets forth as an unlawful act the use of any federally registered pesticide in a manner inconsistent with its labeling. Section 9 (c)(3) and Section 14 of FIFRA provide for written warnings, and for civil and criminal penalties for violations of FIFRA provisions. Section 23(a)(1) of FIFRA empowers the Administrator of U.S. EPA to "enter into cooperative agreements with States...to cooperate in the enforcement of this Act." The authority to enter into such agreements has been delegated to the Regional Administrators of U.S. EPA.

- B. State and County Agricultural Commissioners (hereinafter CACs), are responsible for administering and enforcing the provisions of Division 6 and Division 7, of the California Food and Agricultural Code (hereinafter Code) (California Food and Agricultural Code Section 1 et seq.). Section 12973 of the Code provides that "the use of any pesticide shall not conflict with labeling...which is delivered with the pesticide." Section 12931 of the Code provides that the Director of the Department of Pesticide Regulation shall make such investigations as are necessary for the full enforcement of Division 7, Chapter 2. Section 11737 of the Code empowers the CACs to determine whether any person is operating any equipment or facility in violation of Division 7 of the Code. Section 482 of the Code empowers the Director of Pesticide Regulation to enter into cooperative agreements with the CAC's for the purpose of enforcing Divisions 6 and 7.

III. COORDINATION

- A. Each party to this agreement will designate an individual whose function shall be to coordinate the activities set forth in this cooperative agreement.
- B. Any party to this agreement may request a meeting for purposes of consulting by contacting the other parties to the agreement.

IV. EPISODE REFERRAL

U.S. EPA, DPR and CACASA, by signing this document, each agree to formally report all episodes meeting or appearing to meet one or more of the priority investigation effects criteria listed in Appendix A, as outlined below.

Identifying Party

U.S. EPA
DPR
CAC

Will Notify

DPR who will notify CAC
CAC and U.S. EPA
DPR who will notify U.S. EPA

V. INVESTIGATIONS

- A. The party responsible for the investigation of an episode shall be the CAC where the event occurred. In episodes that involve more than one county, or where it is not appropriate for the CAC of occurrence to investigate, the State will designate the agency that will conduct the investigation.
- B. The State shall assist in the investigation upon request from the CAC. The State may elect to become involved and/or take the lead role in an investigation after consulting with the CAC.

- C. The U.S. EPA will conduct investigations or inspections only after consulting with the State and appropriate CAC.
- D. For priority investigations, the investigation will be completed in the time frame agreed to by the State, CACASA and U.S. EPA, but in no event will the investigation commence later than two working days from the referral to the CAC.
- E. The U.S. EPA may participate in at least one priority investigation per year in cooperation with the State and CAC.

VI. INVESTIGATION REPORTS

- A. The party or parties conducting the field investigation will keep the State coordinator apprised of the major developments in all priority investigations. The State coordinator will, in turn, keep U.S. EPA apprised of the major developments in all priority investigations. Nothing in the agreement will preclude discussions among any of the three parties.
- B. The reports and summaries, and any enforcement action resulting from any priority investigations, will be promptly filed with the State coordinator, and the U.S. EPA coordinator as requested, upon conclusion of the investigation. The investigative reports will contain all available evidence to support state and federal enforcement action when violations are indicated.
- C. The State coordinator will provide the U.S. EPA with a summary report for each episode that resulted in a priority investigation. In no event shall the summary report be provided to U.S. EPA later than 60 days after the investigation is completed, unless legal action is pending and prevents such full reporting. The manner in which the State will track and report on priority investigations is outlined in Section VIII - Implementation Plan.

VII. ENFORCEMENT

- A. Nothing in this agreement will preclude the State and/or the CAC from undertaking any enforcement action with respect to any act that constitutes a violation of State law. Nothing in this agreement will preclude the U.S. EPA from undertaking any enforcement action with respect to any act that constitutes a violation of FIFRA.

- B. The U.S. EPA will discuss with the State coordinator and the CAC involved the appropriateness of initiating enforcement action against pesticide users alleged to be in violation of Section 12(a)(G) of FIFRA. Any enforcement action that may be taken by the U.S. EPA will conform to the guidance of the Final Interpretive Rule pertaining to state primary use enforcement responsibility [48 F.R., 3. 404-411 (Jan 5, 1983)].

VIII. IMPLEMENTATION PLAN

- A. When the State coordinator learns of an episode that appears to meet one or more of the priority investigation effects criteria, he/she will complete the Pesticide Episode Transmittal Record (Appendix B) and send it to the U.S. EPA, the appropriate State Regional Office, the CAC, and other agencies as necessary as soon as possible. The agency responsible for conducting the investigation must commence the investigation within two working days of receiving the Pesticide Episode Transmittal Record.
- B. Within 15 days of receipt of the Pesticide Episode Transmittal Record, the State Regional Office will submit a preliminary report of the CAC's findings to the State coordinator. This report should include the CAC findings, alleged violations, projected completion date, and pending enforcement actions, if any are anticipated.
- C. The CAC shall submit the completed investigation report, including all supporting documents, to the State District Regional within 45 days of completion of the investigation. The State will provide a summary of the CAC findings and anticipated enforcement action to the U.S. EPA coordinator, upon request.
- D. The State will submit the final Priority Episode Investigative Report to the U.S. EPA coordinator within 30 days of receipt of the completed investigation, upon request. The report form may be submitted indicating pending enforcement action.

IX. DISPUTE AND CONFLICT RESOLUTION

It is the desire of all parties to establish a speedy, efficient, and informal method for the resolution of conflicts. In the event of a disagreement about the interpretation or implementation of any section of this agreement, that cannot be resolved informally, a joint meeting of the Senior Associate for Pesticides and Toxics of U.S. EPA Region 9, the Assistant Director of the Enforcement, Environmental Monitoring, and Data Management Division, and the CAC involved, will be convened to resolve the conflict.

X. TERMS

This cooperative agreement, when accepted by all parties, will be valid for one year from date of last signatory. The cooperative agreement may be modified, at any time, by the mutual written consent of all parties, or terminated by any party upon a 30-day advance written notice to the other parties.

XI. PROGRAM EVALUATION

The U.S. EPA, State, and CACASA will select certain counties for the purpose of a joint evaluation of the pesticide enforcement program. The focus of this evaluation will be on investigative techniques and resultant enforcement action to assure U.S. EPA the State is meeting the requirements of Section 26 of FIFRA. The evaluation team will consist of representatives of U.S. EPA Region 9, State, and CAC that is being evaluated. One report will be completed by the evaluation team. No individual agency reports will be written. If the team cannot reach a consensus, all opinions will be included in the final report.

XII. Review

Sixty days prior to the Commissioner's Fall Conference, the State will initiate a meeting of U.S. EPA, State, and CACASA to review the performance of all parties to the agreement and discuss issues pertaining to the agreement.

Appendix A
PRIORITY INVESTIGATION EFFECTS CRITERIA

HUMAN EFFECTS	Death, serious illness (any pesticide illness requiring hospital admission as "in patient status") or any injury or illness involving five or more persons which may have resulted from a single pesticide episode. Investigations of suicides and suicide attempts shall follow procedures outlined in Enforcement letter X (yet to be drafted).
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ENVIRONMENTAL
EFFECTS

Water	Contamination of drinking water supply affecting 10 or more households.
Air	Contamination of air resulting in evacuation, <i>or</i> recommendation to evacuate 5 or more persons by representatives of legally authorized agencies.
Land	Contamination of land or soil resulting in one-half (1/2) acre or more not usable for intended purposes for one year or more.
Animals and Wildlife	Any pesticide incident with associated level of mortality that exceeds the following: Non-target Birds – 50 Non-target Fish – 500 Listed endangered or threatened species – 1 (to be handled on a case by case basis as described under SPECIAL INCIDENTS section of this document.) Domesticated, Game or Other non-target animals – 5

ECONOMIC LOSS

Damage to any property, equipment, livestock (including bees) that is estimated to represent a \$20,000 loss, or 20% crop yield loss (whichever is appropriate).

SPECIAL INCIDENTS

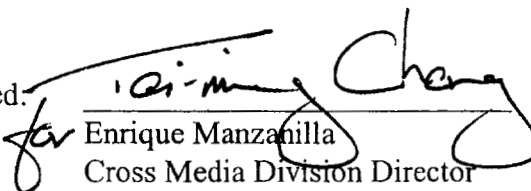
Pesticide episodes (or suspected episodes) occurring within Oregon, Nevada, Arizona, Mexico, or tribal lands that have effects in California. Pesticide episodes (or suspected episodes) occurring within California that have effects in Oregon, Nevada, Arizona, Mexico or tribal lands.

Any accident involving pesticide application aircraft when it is determined that pesticide exposure or effects caused the accident or the accident resulted in pesticide contamination.

Any pesticide related incident, including those involving endangered species, which through discussion between the three parties of this agreement is determined to be of high priority. These incidents shall be tracked as a priority and all parties will be kept apprised of the status of the investigation.


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 06/03/03

Approved: 
for Enrique Manzanilla
Cross Media Division Director

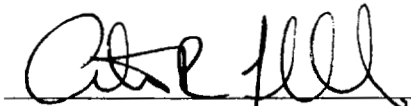
FOR THE STATE OF CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

Date: 8/4/03

Approved: 
Paul Helliker
Director

FOR THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND SEALERS
ASSOCIATION

Date: 8/18/03

Approved: 
Cato Fiksdal
President